

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2246

Introduced by Assembly Member Blakeslee

February 18, 2010

~~An act to amend Section 273.5 of the Penal Code, relating to domestic violence. An act to add Section 243.93 to the Penal Code, relating to battery.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2246, as amended, Blakeslee. ~~Domestic violence. Battery: gassing.~~

Existing law establishes the State Department of Mental Health and provides for the administration of state hospitals and provides for the involuntary confinement of certain individuals in those state hospitals, including persons who have been found not guilty of a charge by reason of insanity, who have been found incompetent to stand trial by a judge, or have been determined, as a result of a mental disorder, to be a danger to themselves or others.

Existing law establishes the State Department of Developmental Services and sets forth its duties and responsibilities, including, but not limited to, administration and oversight of the state developmental centers and programs relating to persons with developmental disabilities. Existing law provides for the judicial commitment of certain persons, including a mentally retarded person who is a danger to himself or herself or others, mentally disordered sex offenders, juvenile wards in need of intensive treatment as a result of a mental disorder, and certain sexually violent predators, to the State Department of

Developmental Services. A person may also be admitted to a developmental center voluntarily who is substantially disabled.

Existing law provides that every person confined in a local detention facility, state prison, or under the jurisdiction of the Division of Juvenile Facilities of the Department of Corrections and Rehabilitation, who commits a battery upon the person of a peace officer by “gassing,” as defined, is guilty of aggravated battery.

This bill would provide that a person confined to a state hospital or residing at a state-operated developmental center operated by the State Department of Developmental Services who commits battery upon the person of a peace officer or employee of a state hospital or state development center, by gassing, is guilty of aggravated battery, a felony punishable by 2, 3, or 4 years in the state prison.

The bill would also require the State Department of Mental Health and the State Department of Developmental Services to submit reports to the Legislature by January 1, 2015, regarding gassing incidents at their respective institutions.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires that any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child corporal injury resulting in a traumatic condition, is guilty of a felony and upon conviction is punished by imprisonment in the state prison for 2, 3, or 4 years, or in a county jail for not more than one year, or by a fine of up to \$6,000, or by both that fine and imprisonment.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 243.93 is added to the Penal Code, to*
2 *read:*

3 243.93. (a) *Every person confined in a state hospital or*
4 *residing in a state-operated developmental center operated by the*
5 *State Department of Developmental Services who commits battery*
6 *by gassing upon the person of any peace officer, as defined in*
7 *Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2,*
8 *or employee of the state hospital or state-operated developmental*
9 *center is guilty of aggravated battery and shall be punished by*
10 *imprisonment in a county jail or by imprisonment in the state*
11 *prison for two, three, or four years.*

12 (b) *For purposes of this section, “gassing” means intentionally*
13 *placing or throwing, or causing to be placed or thrown, upon the*
14 *person of another, any human excrement or other bodily fluids or*
15 *bodily substances or any mixture containing human excrement or*
16 *other bodily fluids or bodily substances that results in actual*
17 *contact with the person’s skin or membranes.*

18 (c) *As used in this section, “director” shall mean the director*
19 *of the state hospital if a violation of subdivision (a) occurs in a*
20 *state hospital, or to the clinical director of a state-operated*
21 *developmental center operated by the State Department of*
22 *Developmental Services if a violation of subdivision (a) occurs in*
23 *a developmental center.*

24 (d) *The director of the state hospital or the clinical director of*
25 *a developmental center, or any other person in charge of the state*
26 *hospital or developmental center, as the case may be, shall use*
27 *every available means to immediately investigate all reported or*
28 *suspected violations of subdivision (a), including, but not limited*
29 *to, the use of forensically acceptable means of preserving and*
30 *testing the suspected gassing substance to confirm the presence*
31 *of human excrement or other bodily fluids or bodily substances.*
32 *If there is probable cause to believe that the individual has violated*
33 *subdivision (a), the director may, when he or she deems it*
34 *medically necessary to protect the health of an officer or employee*
35 *who may have been subject to a violation of this section, order the*
36 *individual to receive an examination or test for hepatitis or*
37 *tuberculosis or both hepatitis and tuberculosis on either a*
38 *voluntary or involuntary basis immediately after the event, and*

1 *periodically thereafter as determined to be necessary by the*
2 *director in order to ensure that further hepatitis or tuberculosis*
3 *transmission does not occur. These decisions shall be consistent*
4 *with an occupational exposure as defined by the Centers for*
5 *Disease Control and Prevention. The results of any examination*
6 *or test shall be provided to the officer or employee who has been*
7 *subject to a reported or suspected violation of this section. Nothing*
8 *in this subdivision shall be construed to otherwise supersede the*
9 *operation of Title 8 (commencing with Section 7500) of Part 3.*
10 *Any person performing tests, transmitting test results, or disclosing*
11 *information pursuant to this section shall be immune from civil*
12 *liability for any action taken in accordance with this section.*

13 *(e) The director or other person in charge of the state hospital*
14 *or developmental center shall refer all reports for which there is*
15 *probable cause to believe that the individual has violated*
16 *subdivision (a) to the local district attorney for prosecution.*

17 *(f) Nothing in this section shall preclude prosecution under both*
18 *this section and any other provision of law.*

19 *SEC. 2. (a) The State Department of Mental Health and the*
20 *State Department of Developmental Services shall report to the*
21 *Legislature, by January 1, 2015, their respective findings and*
22 *recommendations on gassing incidents at state hospitals and*
23 *developmental centers and the medical testing authorized by this*
24 *section. The report shall include, but not be limited to, all of the*
25 *following:*

26 *(1) The total number of gassing incidents at each state hospital*
27 *or developmental center up to the date of the report.*

28 *(2) The disposition of each gassing incident, including the*
29 *administrative penalties imposed, the number of incidents that are*
30 *prosecuted, and the results of those prosecutions, including any*
31 *penalties imposed.*

32 *(3) A profile of the individuals who commit the aggravated*
33 *batteries, including the number of individuals who have one or*
34 *more prior serious or violent felony convictions.*

35 *(4) Efforts that the department has taken to limit these incidents,*
36 *including staff training and the use of protective clothing and*
37 *goggles.*

38 *(5) The results and costs of the medical testing authorized by*
39 *this section.*

1 (b) *This section shall remain in effect only until January 1, 2016,*
2 *and as of that date is repealed, unless a later enacted statute that*
3 *is enacted before January 1, 2016, deletes or extends that date.*

4 SEC. 3. *No reimbursement is required by this act pursuant to*
5 *Section 6 of Article XIII B of the California Constitution because*
6 *the only costs that may be incurred by a local agency or school*
7 *district will be incurred because this act creates a new crime or*
8 *infraction, eliminates a crime or infraction, or changes the penalty*
9 *for a crime or infraction, within the meaning of Section 17556 of*
10 *the Government Code, or changes the definition of a crime within*
11 *the meaning of Section 6 of Article XIII B of the California*
12 *Constitution.*

13 SECTION 1. ~~Section 273.5 of the Penal Code is amended to~~
14 ~~read:~~

15 ~~273.5. (a) Any person who willfully inflicts corporal injury~~
16 ~~resulting in traumatic condition upon a person who is his or her~~
17 ~~spouse, former spouse, cohabitant, former cohabitant, or the mother~~
18 ~~or father of his or her child is guilty of a felony, and upon~~
19 ~~conviction thereof shall be punished by imprisonment in the state~~
20 ~~prison for two, three, or four years, or in a county jail for not more~~
21 ~~than one year, or by a fine of up to six thousand dollars (\$6,000),~~
22 ~~or by both that fine and imprisonment.~~

23 ~~(b) Holding oneself out to be the husband or wife of the person~~
24 ~~with whom one is cohabiting is not necessary to constitute~~
25 ~~cohabitation as the term is used in this section.~~

26 ~~(c) As used in this section, "traumatic condition" means a~~
27 ~~condition of the body, such as a wound or external or internal~~
28 ~~injury, whether of a minor or serious nature, caused by a physical~~
29 ~~force.~~

30 ~~(d) For the purpose of this section, a person shall be considered~~
31 ~~the father or mother of another person's child if the alleged male~~
32 ~~parent is presumed the natural father under Sections 7611 and 7612~~
33 ~~of the Family Code.~~

34 ~~(e) (1) Any person convicted of violating this section for acts~~
35 ~~occurring within seven years of a previous conviction under~~
36 ~~subdivision (a), subdivision (d) of Section 243, or Section 243.4,~~
37 ~~244, 244.5, or 245, shall be punished by imprisonment in a county~~
38 ~~jail for not more than one year, or by imprisonment in the state~~
39 ~~prison for two, four, or five years, or by both imprisonment and a~~
40 ~~fine of up to ten thousand dollars (\$10,000).~~

~~(2) Any person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine.~~

~~(f) If probation is granted to any person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.~~

~~(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted under subdivision (a) who has been convicted of any prior offense specified in subdivision (e), the court shall impose one of the following conditions of probation:~~

~~(1) If the defendant has suffered one prior conviction within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition thereof, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 15 days.~~

~~(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 60 days.~~

~~(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.~~

~~(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:~~

~~(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.~~

~~(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.~~

~~For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation~~

1 under this subdivision, the court shall make a determination of the
2 defendant's ability to pay. In no event shall any order to make
3 payments to a battered women's shelter be made if it would impair
4 the ability of the defendant to pay direct restitution to the victim
5 or court-ordered child support. Where the injury to a married person
6 is caused in whole or in part by the criminal acts of his or her
7 spouse in violation of this section, the community property may
8 not be used to discharge the liability of the offending spouse for
9 restitution to the injured spouse, required by Section 1203.04, as
10 operative on or before August 2, 1995, or Section 1202.4, or to a
11 shelter for costs with regard to the injured spouse and dependents,
12 required by this section, until all separate property of the offending
13 spouse is exhausted.

14 (i) Upon conviction under subdivision (a), the sentencing court
15 shall also consider issuing an order restraining the defendant from
16 any contact with the victim, which may be valid for up to 10 years,
17 as determined by the court. It is the intent of the Legislature that
18 the length of any restraining order be based upon the seriousness
19 of the facts before the court, the probability of future violations,
20 and the safety of the victim and his or her immediate family. This
21 protective order may be issued by the court whether the defendant
22 is sentenced to state prison, county jail, or if imposition of sentence
23 is suspended and the defendant is placed on probation.